

**FILED**

**OCT 18 2005**

**CATHY A. CATTERSON, CLERK**  
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS ERNESTO MORAILA-  
ELIZONDO,

Defendant - Appellant.

No. 05-10089

D.C. No. CR-04-01190-JAT

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
James A. Teilborg, District Judge, Presiding

Submitted October 11, 2005<sup>\*\*</sup>

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

Jesus Ernesto Moraila-Elizondo appeals his conviction and 50-month sentence imposed for illegal re-entry into the United States following deportation, in violation of 8 U.S.C. § 1326(a) and (b)(2).

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Moraila-Elizondo has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. No pro se supplemental brief has been filed. Because our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 82-83 (1988), indicates that Moraila-Elizondo knowingly and voluntarily waived his right to appeal and was sentenced within the terms of the plea agreement, we enforce the waiver and dismiss the appeal. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered knowingly and voluntarily); *see also United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (noting that the changes in sentencing law imposed by *United States v. Booker*, 125 S. Ct. 738 (2005), did not render waiver of appeal involuntary and unknowing).

Counsel's motion to withdraw is **GRANTED**. The appeal is **DISMISSED**.